IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH PAUSHA 1928

CRP.No. 125 of 1998(F)

AGAINST THE ORDER DATED 28/07/1997 IN IA.1056/90 IN OS.87/1960 of PRINCIPAL SUB COURT,ALAPPUZHA

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REVN. PETITIONERS:PETITIONERS-PLAINTIFFS 1 & 3:
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1. NARAYANAN PADMANABHA KAIMAL RESIDING AT CHEMMOKKIL, THURUTHUBHAGOM MURI, VADUTHALA, MATTATHILBHAGOM VILLAGE (D I E D).

2. NARAYANAN BHASKARA KAIMAL OF KOZHISSERILAYA KULAKKUZHIYIL, ...DO....DO..... (D I E D).

1 REV.PETITIONER REPRESENTED BY POWER OF ATTORNEY HOLDER P.K. INDUCHUDAN.

***ADDL.P3&P4 ARE IMPLEADED:**

P3. KARUNAKARA KAIMAL, PUTHENPURACKAL, GIRIJA MANDIRAM, PANAVALLY, CHERTHALA.

P4. SOMASEKHARAN, PANDADE VELI, PANAVALLY, CHERTHALA.

(ADDL.P3&P4 ARE IMPLEADED AS PER ORDER DTD. 16/08/06 ON I.A.NO.528/2004)

BY ADV. SRI.V.GIRI
SMT.LATHA GIRI

....2/-

C.R.P.NO.125/1998

RESPONDENTS: (CR.PETITIONERS):
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1. RAJENDRANATH, S/O.RAVINDRANATHAN NAIR,
THARAMEL KANIYAM PARAMBU VEETTIL, RESIDING AT MUKKATHU MADATHIL, PANAVALLY MURI, PANAVALLY VILLAGE.

2. AJEENDRANATH, S/O.RAVINDRANATHAN NAIR, ...DO...DO....

3. KAMALAMMA, W/O.RAVINDRANATHAN NAIR, ...DO....DO.....

4. AKHILA BHARATHA AYYAPPA SEVA SANGH, BRANCH 100,
PANAVALLY CHERTHALA TALUK REP. BY ITS PRESIDENT.

BY ADV. SRI.JOSEPH A.VADAKKEL for R2
SRI.GEORGE KARITHANAM VARGHESE
SRI.V.J.JOHN
SRI.C.I.ABRAHAM
SRI.JOSE KURIAKOSE (VILANGATTIL)

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03/012007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY, J.

C.R.P.No.125 of 1998 and I.A. No.528 of 2004

Dated this the 3rd day of January, 2007

Order

On the death of the original revision petitioner, I.A. No.528 of 2004 was filed to implead the the petitioners in the I.A. as additional revision petitioners. Even though notice was ordered on 19.2.2004, no steps were taken to serve notice. But, notice in the C.R.P. was served on respondents 3 and 4 in 2006, but, notice was not served on respondent No.1 so far in the main C.R.P. and no effective steps were taken. However, since counsel for the petitioner stated that he shall argue the matter to convince that there is a good case for him. Hence, I am considering the merits of the case after allowing the impleading petition after hearing the counsel for the contesting respondents.

2. The revision petition was filed by the first and third plaintiffs in O.S.No.87 of 1960. The above suit was filed for declaration that the right of management of Nalpatheenniswaram Devaswom and Ooraliparambu temple vest with the three families of the plaintiffs as per the Udampady dated 7.5.1960 and for removal of defendants 6

to 12 from the management and for other consequential reliefs. Defendants 6 and 7 were appointed as Receivers to the management of temples and Devaswom pending the suit. The suit was decreed on 5.6.1962 whereby receivership for the management of the temple was terminated and defendants 6 to 8 and plaintiffs are jointly allowed to be in management of the devaswom and its temple. It is their case that without obtaining permission from the court, one of the receivers (seventh defendant) executed a lease deed in favour of the 12th defendant and his two children on 13.3.1961 in respect of 1 acre 29 cents of land and a building which is the schedule property. This I.A. was filed for possession of the above property. By order dated 18.8.1961, the court has cancelled the said lease deed executed by the seventh defendant. It is the petitioner's further case that even after decree has passed in their case on 5.6.1962, the receiver did not put the legis in possession of the petition schedule property. Defendant Nos. 6, 7 and 12 are no more and petition schedule property is now in the occupation of counter petitioners. Hence, the petition for ordering the counter petitioners to hand over possession of the petition scheduled property to the

petitioners. It is the case of the counter petitioners that this property was never in the possession of the receivers. According to the counter petitioners, this property was held and possessed by their father and it is also stated that 7th defendant had no right to execute a lease deed without the consent in writing of Sarojini Amma who became major by that time. That lease deed was also cancelled. But, the property never came into the custody of the receiver or this court even after the cancellation of the lease deed. This property originally belonged to the Nalpatheenniswaram Devaswom. As per the lease deed executed by the Devaswom authorities on 7.10.1995 M.E. in favour of Panavally Nair Yuvajana Samajam, the Samajam was in possession and enjoyment of the same paying pattam and effecting improvements till right over the property was assigned in favour of Nair Service Society on 2.10.1112 M.E. The tenancy right which the above Yuvajana Samajam had in the property was assigned in favour of the Nair Service Society vide deed No.2262 of Arookutty SRO. Since that day N.S.S. was in continuous possession and enjoyment of this land till they parted with their right over the property to the mother of the Counter petitioner and other members of the

family. The N.S.S. after getting possession of the property renovated the building which was constructed in the property by the Yuvajana Samajam for the purpose of running a school. The N.S.S. vide sale deed No.1584 dated 29.3.1122 M.E. sold their right over the property and the building as stated above in favour of the Counter Petitioner's mother and others. Thus, the mother of the Counter petitioner and others became the lessees of this property and they were enjoying the property effecting necessary improvements. The building was made suitable for the purpose of residence and her parents and other members were residing in the building for a long time. The building was named as Ramakrishna Vilasom Bungalow. While so, in the year 1957 vide deed No.3496 of Arookutty SRO, the right in the property was released in favour of Sarojini, Prasanna Kumari and Mohanan by other members of the family. Sarojini and Prasanna Kumari are the counter petitioner's younger sisters and Mohanan is her brother. As they were minors at the time of the execution of the document the property was held and possessed by her father as guardian of the minors. The 7th defendant had no right to execute a lease deed without the consent in writing of Sarojini Amma who became major by that time.

Anyhow, the lease deed was cancelled by the court by the order dated 18.9.1961. The property was continuously in the uninterrupted possession and enjoyment of the counter petitioner's family and they are entitled to get all the benefits under section 2 (57) and section 13 of Act 1 of 1964. It is also contended that Munsiff Land Tribunal in S.M. case granted patta purchase letter No.2012/76 and the counter petitioners along with the children became absolute owners of the property. The above order was not challenged by anybody. Even after filing the counter in this case, petitioner did not challenge the same.

3. After going through the evidence, it was found as per Ext.B6 that the counter petitioner has got jenmam right in the suo motu proceedings of the Special Munsiff Land Tribunal, Quilon by which they claimed that their right has become absolute. Devaswom did not challenge the S.M. proceedings initiated by the Special Land Tribunal and they have not even challenged the issue of sale certificate. In view of the purchase certificate issued by the Land Tribunal which is not challenged, petitioner is not entitled to get possession and, therefore, the trial court rightly dismissed the petition

filed by the petitioner. There is no merit in the petition and C.R.P. is dismissed.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

C.R.P.No.125/98

Order

Dated:3rd January, 2007